



STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

RIGHT TO DIVERT AND USE WATER

APPLICATION 32011

PERMIT 21347

Right Holder: West Coast Aggregates, Inc.
P.O. Box 1061
Tracy, CA 95378-1061

The State Water Resources Control Board (State Water Board) authorizes the diversion and use of water by the right holder in accordance with the limitations and conditions herein SUBJECT TO PRIOR RIGHTS. The priority of this right dates from **March 6, 2013**. This right is issued in accordance with the State Water Board delegation of authority to the Deputy Director for Water Rights (Resolution 2012-0029) and the Deputy Director for Water Rights redelegation of authority dated July 6, 2012.

The Deputy Director for Water Rights finds that the State Water Board and/or the Applicant have met the following requirements for permit issuance: (a) demonstrated the availability of unappropriated water; (b) resolved protests in compliance with Water Code section 1330 et seq. and included appropriate permit conditions; (c) demonstrated that the water will be diverted and used without injury to any lawful user of water; (d) demonstrated that the intended use is beneficial; and (e) demonstrated that the requirements of the California Environmental Quality Act (CEQA) have been met or that the project is exempt from CEQA.

The State Water Board has complied with its independent obligation to consider the effect of the proposed project on public trust resources and to protect those resources where feasible. (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419 [189 Cal.Rptr. 346, 658 P.2d 709].)

Right holder is hereby granted a right to divert and use water as follows:

1. Source of water: **(1) Nuff Creek and (2) Unnamed Stream**

tributary to: **(2) Nuff Creek thence (1) Pilarcitos Creek thence the Pacific Ocean**

within the County of **San Mateo**.

2. Location of points of diversion

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(1) North 2,009,002 feet and East 6,010,692 feet	NE ¼ of SW ¼	15	5S	5W	MD
(2) North 2,008,828 feet and East 6,010,558 feet	NE ¼ of SW ¼	15	5S	5W	MD

Location of point of redirection and place of storage

By California Coordinate System of 1983 in Zone 3	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian
(2) North 2,008,828 feet and East 6,010,558 feet	NE ¼ of SW ¼	15	5S	5W	MD

3. Purpose of use	4. Place of use					
	40-acre subdivision of public land survey or projection thereof	Section (Projected)*	Township	Range	Base and Meridian	Acres
Fish and Wildlife Preservation and Enhancement	At stream segment between Point of Diversion 1 located by California Coordinate System of 1983, Zone 3, North 2,009,002 and East 6,010,692, being within NE ¼ of SW ¼ of Section 15 T5S, R5W, MDB&M (upstream limit), and the confluence of Pilarcitos Creek and the Pacific Ocean (downstream limit).					

The place of use is shown on map filed on March 6, 2013 with the State Water Board.

- The water appropriated shall be limited to the quantity which can be beneficially used and shall not exceed a total of **147 acre-feet per year** by storage to be collected from November 1 of each year to May 31 of the succeeding year.
(0000005C)
- No water shall be collected to storage outside of the specified season to offset evaporation and seepage losses or for any other purpose.
(0000005I)
- The maximum rate of diversion from Nuff Creek to offstream storage shall be limited as follows:
 - When the measured flow at Point of Diversion 1 is greater than 2.0 cfs and less than or equal to 5.7 cfs, the rate of diversion shall not exceed 10 percent of the flow.
 - When the measured flow at Point of Diversion 1 is greater than 5.7 cfs, the rate of diversion shall not exceed 20 cfs.
 (0000005J)
- Construction work and complete application of the water to the authorized use shall be prosecuted with reasonable diligence and completed by December 31, 2034.
(0000009)
- Based on the information in the Division's files, water has not been used under a claimed existing right on the place of use. If right holder exercises a claimed existing right on the place of use authorized by this right without prior approval from the State Water Board, right holder shall forfeit this water right.
(0000021C)

6. If it is determined that the as-built conditions of the project are not correctly represented by the map(s) prepared to accompany the application, right holder shall, at their expense have the subject map(s) updated or replaced with equivalent as-built map(s). Said revision(s) or new map(s) shall be prepared by a civil engineer or land surveyor registered or licensed in the State of California and shall meet the requirements prescribed in California Code of Regulations, title 23, section 715 et seq. Said revision(s) or map(s) shall be furnished upon request of the Deputy Director for Water Rights.

(0000030)

7. Right holder shall install and maintain an outlet pipe of adequate capacity in the dam as near as practicable to the bottom of the natural stream channel, or provide other means satisfactory to the State Water Board, in order that water entering the reservoir which is not authorized for appropriation under this permit can be released.

(0050043B)

8. No water shall be diverted to offstream storage under this right unless right holder is monitoring and reporting said diversion of water. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring the rate and quantity of water diverted and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of all diversions under this right that includes the date, time, rate of diversion, and the amount of water diverted. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.

(0060046)

9. No water shall be diverted under this right unless right holder is monitoring and reporting the water surface elevation in the reservoir. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring water surface elevations from the maximum water line to the minimum water line known to exist for the reservoir and shall be properly maintained.

Right holder shall provide the Division of Water Rights with evidence that the device has been installed and the mark or reading corresponding to the maximum water line of the reservoir with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.

Right holder shall maintain a record of water surface elevations. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights. The State Water Board may require release of water held in storage that cannot be verified by monthly records. Failure to maintain or submit the required records may result in the requirement to release the entire content of the reservoir's storage.

(0100047)

10. In accordance with the requirements of Water Code Section 1393, right holder shall clear the site of the proposed reservoir of all structures, trees, and other vegetation, which would interfere with the use of the reservoir for water storage and recreational purposes.
(0120050A)
11. No water shall be diverted under this right unless right holder is monitoring and reporting the release of water from the reservoir. This monitoring shall be conducted using a device and methods satisfactory to the Deputy Director for Water Rights. The device shall be capable of monitoring the rate and quantity of water released to the stream channel from each reservoir and shall be properly maintained.
- Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every five years after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights.
- Right holder shall maintain a record of all releases of water to the stream channel under this right that includes the date, time, rate of release, and the amount of water released. The records shall be submitted with the annual report or whenever requested by the Division of Water Rights.
(0100052)
12. No water shall be diverted under this right unless right holder is operating in accordance with a mitigation plan satisfactory to the Deputy Director for Water Rights. Said plan shall be provided to the California Department of Fish and Wildlife. The mitigation plan shall address eradication of non-native species. Right holder shall submit a report on mitigation plan activities in accordance with the time schedule contained in the mitigation plan, and whenever requested by the Division of Water Rights. The Deputy Director for Water Rights may require modification of the mitigation plan upon a determination that the plan is ineffective or unsuccessful, or provide relief from this term upon a determination that the mitigation plan is no longer required.
(0400053)
13. No water shall be diverted under this right unless the flow in Nuff Creek is at or above 2 cubic feet per second, as determined at Point of Diversion 1.
(0140060)
14. No water shall be diverted under this water right unless right holder is bypassing the flow required by this water right by use of a passive bypass device.
- Right holder shall provide the Division of Water Rights with evidence that the device has been installed with the first annual report submitted after device installation. Right holder shall provide the Division of Water Rights with evidence that substantiates that the device is functioning properly every year after device installation as an enclosure to the current annual report or whenever requested by the Division of Water Rights. Evidence required by this condition shall include current photographs of the system in place and a statement, signed by the right holder, certifying that the system is still operating as designed.
(0050062C)

15. No water shall be used under this right until right holder has filed a report of waste discharge with the California Regional Water Quality Control Board, San Francisco Bay Region, pursuant to Water Code section 13260, and the Regional Water Board or State Water Board has prescribed waste discharge requirements or has indicated that waste discharge requirements are not required. Thereafter, water may be diverted only during such times as all requirements prescribed by the Regional Water Board or State Water Board are being met. (0290101)
16. An erosion control/revegetation plan and implementation schedule, prepared by a licensed civil engineer, shall be submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. Before storing water in the reservoir, right holder shall furnish evidence which substantiates that the erosion control/revegetation plan has been implemented. Evidence includes photographs showing the project area vegetation and slopes. (0000207)
17. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area. (0000208)
18. Right holder shall comply with the following provisions which are derived from the Pilarcitos Quarry Expansion Environmental Impact Report (EIR, SCH # 2006112102) as filed by the County of San Mateo:
- A. For the protection and enhancement of fish and other instream public trust resources, right holder shall, in consultation with the California Department of Fish and Wildlife and National Marine Fisheries Service, prepare a Site Specific Study as set forth in Mitigation Measure C.5b of the EIR. The Site Specific Study shall include a Water System Operation and Management Plan as described in Item 7 of Mitigation Measure C.5b. Prior to implementing the Site Specific Study and diverting water under this right, right holder shall obtain the approval of the Division of Water Rights, California Department of Fish & Wildlife, and National Marine Fisheries Service.
 - B. For the protection of California red-legged frog (*Rana draytoni*) and San Francisco garter snake (*Thamnophis sirtalis tetrataenia*), prior to starting construction of facilities related to the diversion of water approved under this right, right holder shall prepare a protection plan for these species that incorporates the Standard Pre-construction Requirements set forth in Mitigation Measure D.2a of the EIR. Said requirements shall include:
 - 1. Submitting credentials of biologists performing work
 - 2. A worker's education and awareness training program for CRLF and SFGS
 - 3. Vehicle and equipment management and operation practices
 - 4. Erosion control measures

Right holder shall obtain approval of the protection plan from the California Department of Fish & Wildlife prior to constructing the facilities. Following construction of the facilities, right holder shall include the facilities in the bi-annual surveys for CRLF and SFGS required by the Quarry Operations/Water Management provisions of Mitigation Measure D.2.a.
 - C. Right holder shall operate releases from the reservoir per the determination of the Pilarcitos Creek Restoration Workgroup (Mitigation Measure C.4.a). In the event that the Pilarcitos Creek Restoration Workgroup is no longer available to determine annual releases from the reservoir, right holder shall, within 15 days of discovering such unavailability, confer with, and implement releases as directed by, the National Marine Fisheries Service or California Department of Fish &

Wildlife. Right holder shall include information describing reservoir release operations in its annual reports to the Division of Water Rights in accordance with Terms F and G of this right.

- D. Right holder shall operate the water management system in a manner that does not reduce baseflows within Nuff Creek, relative to baseline conditions. Baseline conditions will be determined by the 5-year Periodic Hydraulic Report (Mitigation Measure C.4c). Said report shall include:
1. A review of previous year's Annual Streamflow Monitoring Reports required by Mitigation Measure C.4.b;
 2. A review of the results of any subsurface investigation conducted since the last periodic Hydraulic Report;
 3. A review of the periodic Water System Annual Monitoring Report prepared pursuant to Mitigation Measure C.5.c;
 4. Results of any additional field investigations related to then-existing surface and groundwater hydrology conditions;
 5. Analysis of likely short term (5 years) and long term impacts of the diversion of water on baseflows of Nuff Creek.
- E. No water shall be diverted under this right unless right holder is in compliance with the water quality standards of the Basin Plan as imposed by the Regional Water Quality Control Board, San Francisco Bay Region (Mitigation Measure C.5.c).
- F. Right holder shall monitor the effects of the water management system on water quality and the natural hydrograph of Nuff Creek and Pilarcitos Creek, as described in the Water System Monitoring and Reporting Program (Mitigation Measure C.5c). Right holder shall submit the Water System Annual Monitoring Report with the first annual report for this right after the commencement of diversion of water.
- (0400500)
19. The State Water Board reserves jurisdiction to modify the terms and conditions of this right, including rate of diversion limitations and minimum flow requirements, or related criteria for the protection of fish and wildlife, (1) based on the Site Specific Study required by this right or any additional fishery studies that may be conducted in Nuff Creek and Pilarcitos Creek, or (2) should unforeseen adverse impacts occur to fish or wildlife, water quality, or other instream beneficial uses. Such action will be taken only after notice to interested parties and opportunity for hearing.
- (0400600)
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THIS RIGHT IS ALSO SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS:

- A. Right holder is on notice that: (1) failure to timely commence or complete construction work or beneficial use of water with due diligence, (2) cessation or partial cessation of beneficial use of water, or (3) failure to observe any of the terms or conditions of this right, may be cause for the State Water Board to consider revocation (including partial revocation) of this right. (Cal. Code Regs., tit. 23, § 850.) (0000016)
- B. Right holder is on notice that when the State Water Board determines that any person is violating, or threatening to violate, any term or condition of a right, the State Water Board may issue an order to that person to cease and desist from that violation. (Wat. Code, § 1831.) (0000017)
- C. Right holder is not authorized to make any modifications to the location of diversion facilities, place of use or purposes of use, or make other changes to the project that do not conform with the terms and conditions of this right, prior to submitting a change petition and obtaining approval of the State Water Board. (0000018)
- D. Once the time to develop beneficial use of water ends under this permit, right holder is not authorized to increase diversions prior to submitting a time extension petition and obtaining approval of the State Water Board. (0000019)
- E. The amount of water for consideration when issuing a license shall be limited to only the amount of water diverted and applied to beneficial use in compliance with the terms and conditions of this right, as determined by the State Water Board. (Wat. Code, § 1610.) (0000006)
- F. Right holder shall maintain records of the amount of water diverted and used under this right to enable the State Water Board to determine the amount of water that has been applied to beneficial use pursuant to Water Code section 1605. (0000015)
- G. Right holder shall promptly submit any reports, data, or other information that may reasonably be required by the State Water Board, including but not limited to documentation of water diversion and use under this right and documentation of compliance with the terms and conditions of this right. (0000010)
- H. No water shall be diverted under this right unless right holder is operating in accordance with a compliance plan, satisfactory to the Deputy Director for Water Rights. Said compliance plan shall specify how right holder will comply with the terms and conditions of this right. Right holder shall comply with all reporting requirements in accordance with the schedule contained in the compliance plan. (0000070)
- I. Right holder shall grant, or secure authorization through right holder's right of access to property owned by another party, the staff of the State Water Board, and any other authorized representatives of the State Water Board the following:
1. Entry upon property where water is being diverted, stored or used under a right issued by the State Water Board or where monitoring, samples and/or records must be collected under the conditions of this right;

2. Access to copy any records at reasonable times that are kept under the terms and conditions of a right or other order issued by State Water Board;
3. Access to inspect at reasonable times any project covered by a right issued by the State Water Board, equipment (including monitoring and control equipment), practices, or operations regulated by or required under this right; and,
4. Access to photograph, sample, measure, and monitor at reasonable times for the purpose of ensuring compliance with a right or other order issued by State Water Board, or as otherwise authorized by the Water Code.

(0000011)

- J. This right shall not be construed as conferring right of access to any lands or facilities not owned by right holder.

(0000022)

- K. All rights are issued subject to available flows. Inasmuch as the source contains treated wastewater, imported water from another stream system, or return flow from other projects, there is no guarantee that such supply will continue.

(0000025)

- L. This right does not authorize diversion of water dedicated by other right holders under a senior right for purposes of preserving or enhancing wetlands, habitat, fish and wildlife resources, or recreation in, or on, the water. (Wat. Code, § 1707.) The Division of Water Rights maintains information about these dedications. It is right holders' responsibility to be aware of any dedications that may preclude diversion under this right.

(0000212)

- M. No water shall be diverted or used under this right, and no construction related to such diversion shall commence, unless right holder has obtained and is in compliance with all necessary permits or other approvals required by other agencies. If an amended right is issued, no new facilities shall be utilized, nor shall the amount of water diverted or used increase beyond the maximum amount diverted or used during the previously authorized development schedule, unless right holder has obtained and is in compliance with all necessary requirements, including but not limited to the permits and approvals listed in this term.

Within 90 days of the issuance of this right or any subsequent amendment, right holder shall prepare and submit to the Division of Water Rights a list of, or provide information that shows proof of attempts to solicit information regarding the need for, permits or approvals that may be required for the project. At a minimum, right holder shall provide a list or other information pertaining to whether any of the following permits or approvals are required: (1) lake or streambed alteration agreement with the Department of Fish and Wildlife (Fish & G. Code, § 1600 et seq.); (2) Department of Water Resources, Division of Safety of Dams approval (Wat. Code, § 6002); (3) Regional Water Quality Control Board Waste Discharge Requirements (Wat. Code, § 13260 et seq.); (4) U.S. Army Corps of Engineers Clean Water Act section 404 permit (33 U.S.C. § 1344); and (5) local grading permits.

Right holder shall, within 30 days of issuance of any permits, approvals or waivers, transmit copies to the Division of Water Rights.

(0000203)

- N. Urban water suppliers must comply with the Urban Water Management Planning Act (Wat. Code, § 10610 et seq.). An "urban water supplier" means a supplier, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually.

Agricultural water users and suppliers must comply with the Agricultural Water Management Planning Act (Act) (Water Code, § 10800 et seq.). Agricultural water users applying for a permit from the State Water Board are required to develop and implement water conservation plans in accordance with the Act. An "agricultural water supplier" means a supplier, either publicly or privately owned, supplying more than 50,000 acre-feet of water annually for agricultural purposes. An agricultural water supplier includes a supplier or contractor for water, regardless of the basis of right, which distributes or sells for ultimate resale to customers.

(0000029D)

- O. Pursuant to Water Code sections 100 and 275 and the common law public trust doctrine, all rights and privileges under this right, including method of diversion, method of use, and quantity of water diverted, are subject to the continuing authority of the State Water Board in accordance with law and in the interest of the public welfare to protect public trust uses and to prevent waste, unreasonable use, unreasonable method of use, or unreasonable method of diversion of said water.

The continuing authority of the State Water Board may be exercised by imposing specific requirements over and above those contained in this right with a view to eliminating waste of water and to meeting the reasonable water requirements of right holder without unreasonable draft on the source. Right holder may be required to implement a water conservation plan, features of which may include but not necessarily be limited to (1) reusing or reclaiming the water allocated; (2) using water reclaimed by another entity instead of all or part of the water allocated; (3) restricting diversions so as to eliminate agricultural tailwater or to reduce return flow; (4) suppressing evaporation losses from water surfaces; (5) controlling phreatophytic growth; and (6) installing, maintaining, and operating efficient water measuring devices to assure compliance with the quantity limitations of this right and to determine accurately water use as against reasonable water requirements for the authorized project. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such specific requirements are physically and financially feasible and are appropriate to the particular situation.

The continuing authority of the State Water Board also may be exercised by imposing further limitations on the diversion and use of water by right holder in order to protect public trust uses. No action will be taken pursuant to this paragraph unless the State Water Board determines, after notice to affected parties and opportunity for hearing, that such action is consistent with California Constitution, article X, section 2; is consistent with the public interest; and is necessary to preserve or restore the uses protected by the public trust.

(0000012)

- P. The quantity of water diverted under this right is subject to modification by the State Water Board if, after notice to right holder and an opportunity for hearing, the State Water Board finds that such modification is necessary to meet water quality objectives in water quality control plans which have been or hereafter may be established or modified pursuant to Division 7 of the Water Code. No action will be taken pursuant to this paragraph unless the State Water Board finds that (1) adequate waste discharge requirements have been prescribed and are in effect with respect to all waste discharges which have any substantial effect upon water quality in the area involved, and (2) the water quality objectives cannot be achieved solely through the control of waste discharges.

(0000013)

- Q. This right does not authorize any act which results in the taking of a candidate, threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish & G. Code, § 2050 et seq.) or the federal Endangered Species Act (16 U.S.C. § 1531 et seq.). If a "take" will result from any act authorized under this right, right holder shall obtain any required authorization for an incidental take prior to construction or operation of the project. Right holder shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this right.

(0000014)

This right is issued and right holder takes it subject to the following provisions of the Water Code:

Section 1390. A permit shall be effective for such time as the water actually appropriated under it is used for a useful and beneficial purpose in conformity with this division (of the Water Code), but no longer .

Section 1392. Every permittee, if he accepts a permit, does so under the conditions precedent that no value whatsoever in excess of the actual amount paid to the State therefor shall at any time be assigned to or claimed for any permit granted or issued under the provisions of this division (of the Water Code), or for any rights granted or acquired under the provisions of this division (of the Water Code), in respect to the regulation by any competent public authority of the services or the price of the services to be rendered by any permittee or by the holder of any rights granted or acquired under the provisions of this division (of the Water Code) or in respect to any valuation for purposes of sale to or purchase, whether through condemnation proceedings or otherwise, by the State or any city, city and county, municipal water district, irrigation district, lighting district, or any political subdivision of the State, of the rights and property of any permittee, or the possessor of any rights granted, issued, or acquired under the provisions of this division (of the Water Code).

STATE WATER RESOURCES CONTROL BOARD

*Barbara Evoy, Deputy Director
Division of Water Rights*

Dated: